Punca Klasik Sdn Bhd v All Persons in Occupation of the Wooden House Erected on a Portion of Land held under Grant No 26977 for Lot 4271 in the Township of Johor Bahru, Johor and Another Action (No 2)

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO 24–655 OF 1994 AND NO 24–872 OF 1994
ABDUL MALIK ISHAK J
26 JUNE 1995

Land Law *— Land and fixtures — Building — Houses permanently fastened to the earth — Whether formed part of land — Whether damages payable for demolition of houses — National Land Code 1965 s 5(c) — Land Enactment No 1 s 62*

Land Law *— Ownership — Payments of quit rents, assessment rates, electricity and water bills — Whether payment indicative of ownership*

Land Law *— Sale of land — Trust — Trustees were registered proprietors of land which was trust property — Whether beneficiaries of trust had authority to enter into contract to sell the land*

Land Law *— Transfer — Alienated land — Whether the transfer of a part of alienated land or a part of an undivided share of that land was valid — National Land Code 1965 s 214*

Trusts and Trustees *— Trustees — Acting as trustees — Whether trustees can act by majority — Whether trustees must act in unison*

The plaintiffs were the registered proprietors of a piece of land comprised under Grant No 26977 for Lot 4271, in the township of Johor Bahru ('the land'). They had bought the land from the trustees of the estate of Syed Hassan bin Ahmad Alattas ('the said estate') in 1994 with the intention of developing the land. The plaintiffs discovered that there were houses erected on the land and occupied by individuals without their permission. Notices of demand for vacant possession were issued to those persons in occupation of the houses and because the notices were neglected, the plaintiffs applied under O 89 of the Rules of the High Court 1980 ('RHC') for possession of the land. One Lim Kim Leung ('Lim') and one Ng Eng Hing ('Ng') entered memorandums of appearance to the plaintiffs' originating summons. It was not disputed that the plaintiffs were the registered proprietors of the land but both Lim and Ng contended that they were the owners of two separate portions of land that formed part and parcel of the land which has since been registered in the plaintiffs' name. Lim contended that his father had bought that portion from one Syed Ali bin Hassan Alattas ('Syed Ali') in 1962 vide a written sale agreement. Ng also contended that his father had bought the other portion from one Syed Abdullah bin Hassan Alattas ('Syed Abdullah') as reflected in a written agreement dated in 1951. Both Syed Ali and Syed Abdullah were beneficiaries of the said estate. The

issue before the court was whether the purported sale agreements were valid to pass title to the defendants.

Held, allowing the prayers in both originating summons:

(1) Both Syed Ali and Syed Abdullah were beneficiaries of a trust property and in that capacity they lacked authority to enter into a legally enforceable contract to sell that trust property. Only the registered proprietor at that material time namely, the trustees had the authority to sell the land (see pp 110I, 111A); *Yeoh Tiong Lay & Sons Holdings Sdn Bhd v Annavi s/o Mookan & Anor, Dekor Panel Emas Sdn Bhd (intervener)* [1994] 3 CLJ 265 followed.

(2) The interests of the defendants' fathers were not registered pursuant to s 65 of the Land Enactment No 1 and since these portions were not dealt with in accordance with Pt V of the Land Enactment No 1, the agreements that were entered into between the parties must be regarded as null and void and of no effect within the meaning of s 63 of the Land Enactment No 1 (see p 110H).

(3) Section 214 of the National Land Code 1965 ('the NLC') prohibits totally the transfer of a part of any alienated land or a part of an undivided share in that land (see p 112I); *Peter Lai Khee Chin & Anor v Collector of Stamp Duties* [1973] 2 MLJ 33 distinguished.

(4) Payments of quit rents, assessment rates, electricity and water bills cannot be used as barometers to gauge ownership of lands without cogent supportive evidence in that direction. It is the court that will decide the question as to the ownership of the land (see p 115D); *Yong Yin Siew v Chong Sheak Thow* [1988] 3 MLJ 115 and *Mohd Ali Jahn bin Yusop Sahibjahn & Anor v Zaleha bte Mat Zin & Anor* [1995] 1 CLJ 533 followed.

(5) The houses built on those parts or portions of the land were permanently fastened to the earth. These houses are part of the land and the ownership thereof vests with the owner of the land (see p 115E); *Holland v Hodgson* [1872] LR 7 CP 328; *Shell Company of the Federation of Malaya Ltd v Commissioner of the Federal Capital of Kuala Lumpur* [1964] MLJ 302 and *MBf Finance Bhd v Global Pacific Textile Industries Sdn Bhd (in receivership) & Anor* [1994] 2 AMR 1084 followed. As such the plaintiffs have the right to demolish the houses and the defendants are not entitled to damages (see p 120E).

(6) On equity, it is now trite that our land laws are governed by the NLC which does not allow the law to be tampered with equity (see p 117D); *Verama v Amarugam & Anor* [1982] 1 MLJ 107 followed. On the facts even the principle of equitable estoppel does not apply because there was no evidence of any inducement or encouragement by the plaintiffs or any expectation held out by them to both the defendants on the strength of which they had

expended money on those parts or portions of the land. Further, there was no landlord-tenant relationship between the parties and, consequently, the principle of equitable estoppel has no application here (see p 117E); *Khew Ah Bah v Hong Ah Mye* [1971] 2 MLJ 86; *Ooi Ho Cheng v Grace Joseph & Ors* [1975] 1 MLJ 168; *Lim Hock Kim v Sim Song Quee* [1982] 2 MLJ 210; *Ooi Ai Seng v Chan Lim Lim* [1973] 2 MLJ 20 and *Tan Khien Toong & Ors v Hoong Bee & Co* [1987] 1 MLJ 387 followed.

(7) Trustees cannot act by a majority unless expressly authorized in the trust instrument. It is a well-settled principle that the trustees must act in unison (see p 117E); *Re Butlins's WT* [1976] Ch 251; *Luke v South Kensington Hotel Ltd* (1879) 11 Ch 121 and *Foo Yin Shang & Anor v Foo Yin Fong & Ors* [1960] MLJ 63 followed.

[Bahasa Malaysia summary

Plaintif-plaintif adalah tuanpunya berdaftar sebidang tanah di bawah Geran No 26977 Lot 4271 di bandar Johor Bahru ('tanah itu'). Mereka telah membeli tanah itu daripada pemegang-pemegang amanah estet Syed Hassan bin Ahmad Alattas ('estet tersebut') dalam tahun 1994 dengan niat untuk membangunkan tanah itu. Plaintif-plaintif telah mendapati bahawa terdapat beberapa rumah yang didirikan di atas tanah itu dan dihuni oleh beberapa orang individu tanpa keizinan mereka. Notis tuntutan untuk milikan kosong telah dikeluarkan kepada orang-orang yang menghuni di dalam rumah-rumah tersebut dan oleh kerana notis-notis itu telah diabaikan, plaintif-plaintif telah memohon di bawah A 89 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') untuk milikan tanah itu. Seorang Lim Kim Leung ('Lim') dan seorang Ng Eng Hing ('Ng') telah memasukkan memorandum kehadiran terhadap saman pemula plaintif-plaintif. Adalah tidak dipertikaikan bahawa plaintif-plaintif adalah tuanpunya berdaftar tanah itu tetapi Lim dan Ng telah menegaskan bahawa mereka adalah pemunya dua bahagian tanah yang berasingan yang merupakan sebahagian daripada tanah itu yang kini telah pun didaftar di bawah nama plaintif-plaintif. Lim mengatakan bahawa ayahnya telah membeli bahagian tanah itu daripada seorang Syed Ali bin Hassan Alattas ('Syed Ali') pada tahun 1962 melalui satu perjanjian penjualan bertulis. Ng juga mengatakan bahawa ayahnya telah membeli bahagian yang lain itu daripada seorang Syed Abdullah bin Hassan Alattas ('Syed Abdullah') yang digambarkan di dalam satu perjanjian bertulis bertarikh pada 1951. Kedua-dua orang Syed Ali dan Syed Abdullah adalah benefisiari estet tersebut. Isu di hadapan mahkamah adalah sama ada perjanjian-perjanjian penjualan yang dikatakan adalah sah untuk memindahkan hakmilik kepada defendan-defendan.

Diputuskan, membenarkan permohonan-permohonan kedua-dua saman pemula:

(1) Kedua-dua orang Syed Ali dan Syed Abdullah adalah benefisiari harta amanah dan dalam keupayaan itu, mereka tidak mempunyai kuasa untuk memasuki satu kontrak yang berkuatkuasa dari segi undang-undang untuk menjual harta amanah itu. Hanya tuan punya berdaftar pada masa material itu, iaitu pemegang amanah, yang mempunyai kuasa untuk menjual tanah itu (lihat ms 110I, 111A); *Yeoh Tiong Lay & Sons Holdings Sdn Bhd v Annavi s/o Mookan & Anor, Dekor Panel Emas Sdn Bhd (intervener)* [1994] 3 CLJ 265 diikut.

(2) Kepentingan-kepentingan bapa-bapa defendan-defendan telah tidak didaftar menurut s 65 Enakmen Tanah No 1 dan memandangkan bahagian-bahagian ini telah tidak dikendalikan mengikut Bahagian V Enakmen Tanah No 1, perjanjian-perjanjian yang dimasuki di antara pihak-pihak mestilah dianggap sebagai batal dan tak salah dan tidak berkesan mengikut makna s 63 Enakmen Tanah No 1 (lihat ms 110H).

(3) Seksyen 214 Kanun Tanah Negara 1965 ('KTN') melarang secara keseluruhan pindahmilik sebahagian tanah berimilik atau sebahagian daripada syer yang tidak berpecahan dalam tanah begitu (lihat ms 112I); *Peter Lai Khee Chin & Anor v Collector of Stamp Duties* [1973] 2 MLJ 33 dibeza.

(4) Pembayaran cukai tanah, kadaran taksiran, bil-bil elektrik dan bekalan air tidak boleh digunakan sebagai satu barometer untuk menentukan pemunyaan tanah tersebut tanpa keterangan sokongan yang kukuh dalam arahan itu. Adalah mahkamah yang akan memutuskan soalan pemunyaan tanah itu (lihat ms 115D); *Yong Yin Siew v Chong Sheak Thow* [1988] 3 MLJ 115 dan *Mohd Ali Jahn bin Yusop Sahibjahn & Anor v Zaleha bte Mat Zin & Anor* [1995] 1 CLJ 533 diikut.

(5) Rumah-rumah yang dibina di atas bahagian-bahagian tanah itu telah dilekapkan secara kekal kepada tanah. Rumah-rumah ini adalah sebahagian daripada tanah itu dan pemunyaan seterusnya adalah terletakhak pada tuanpunya tanah itu (lihat ms 115E); *Holland v Hodgson* (1872) LR 7 CP 328; *Shell Company of the Federation of Malaya Ltd v Commissioner of the Federal Capital of Kuala Lumpur* [1964] MLJ 302 dan *MBf Finance Bhd v Global Pacific Textile Industries Sdn Bhd (in receivership) & Anor* [1994] 2 AMR 1084 diikut. Oleh itu plaintif-plaintif mempunyai hak untuk memusnahkan rumah-rumah itu dan defendan-defendan tidak berhak untuk mendapat gantirugi (lihat ms 120B).

(6) Mengenai ekuti, adalah mantap bahawa undang-undang tanah kita ditentukan oleh KTN yang tidak membenarkan undang-undang untuk diusik dengan ekuiti (lihat ms 117D); *Verama v Amarugam & Anor* [1982] 1 MLJ 107 diikut. Atas fakta-fakta, prinsip estopel ekuiti juga tidak terpakai kerana tidak ada sebarang keterangan yang menunjukkan terdapatnya dorongan atau galakan

daripada plaintif-plaintif atau sebarang harapan yang diberikan oleh mereka kepada kedua-dua defendan di mana berdasarkannya mereka telah membelanjakan wang ke atas bahagian-bahagian tanah itu. Tambahan pula, tidak terdapat hubungan tuan tanah dan penyewa antara pihak-pihak tersebut dan oleh itu, prinsip estopel ekuiti tidak terpakai di sini (lihat ms 117E); *Khew Ah Bah v Hong Ah Mye* [1971] 2 MLJ 86; *Ooi Ho Sheng v Grace Joseph & Ors* [1975] 1 MLJ 168; *Lim Hock Kim v Sim Seng Quee* [1982] 2 MLJ 210; *Ooi Ai Seng v Chan Lim Lim* [1973] 2 MLJ 20 dan *Tan Khien Toong & Ors v Hoong Bee & Co* [1987] 1 MLJ 387 diikut.

(7) Pemegang-pemegang amanah tidak boleh bertindak secara majoriti kecuali jika diberi kuasa secara nyatanya dalam suratcara amanah itu. Adalah satu prinsip yang mantap bahawa pemegang-pemegang amanah mesti bertindak bersama (lihat ms 117G); *Re Butlins's WT* [1976] Ch 251; *Luke v South Kensington Hotel Ltd* (1879) 11 Ch 121 dan *Foo Yin Shang & Anor v Foo Yin Fong & Ors* [1960] MLJ 63 diikut.]

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No J–02–263–96. The judgment on the defendants' application for stay pending appeal is reported at [1996] 4 MLJ 533.]

Notes

For cases on the sale of land which trust property, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2804–2806.

For a case on payment of quit rent and ownership, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) para 2183.

For cases on land and fixtures in relation to buildings, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1899–1906.

Cases referred to

Borneo Housing Mortgage Finance Bhd v Personal Representatives of the Estate of Lee Lun Wah Maureen & Anor [1994] 1 MLJ 209

Bristol Corporation v Persons Unknown [1974] 1 All ER 593

Butlins's WT, Re [1976] Ch 251

Cheow Chew Khoon (t/a Cathay Hotel) v Abdul Johari bin Abdul Rahman [1995] 1 MLJ 457

Davis Contractors Ltd v Fareham UDC [1956] AC 696

Foo Yin Shang & Anor v Foo Yin Fong & Ors [1960] MLJ 63

Holland v Hodgson (1872) LR 7 CP 328

Johore Para Rubber Company Ltd v Registrar of Companies, Malayan Union [1948] MLJ 135

Joseph Constantine Steamship Line Ltd v Imperial Smelting Corp Ltd [1942] AC 154

Kepong Prospecting Ltd & Ors v Schmidt [1968] 1 MLJ 170

Khew Ah Bah v Hong Ah Mye [1971] 2 MLJ 86

Lajahim bin Sinabong v Napsiah bte Awang Atan [1993] 2 AMR Supp Rep 574

Lim Hock Kim v Sim Seng Quee [1982] 2 MLJ 210
Luke v South Kensington Hotel Ltd (1879) 11 Ch D 121
MBf Finance Bhd v Global Pacific Textile Industries Sdn Bhd (in receivership) & Anor (1994) 2 AMR 1084
Mohd Ali Jahn bin Yusop Sahibjahn & Anor v Zaleha bte Mat Zin & Anor [1995] 1 CLJ 533
Ooi Ai Seng v Chan Lin Lam [1973] 2 MLJ 20
Ooi Ho Cheng v Grace Joseph & Ors [1975] 1 MLJ 168
Peter Lai Khee Chin & Anor v Collector of Stamp Duties [1973] 2 MLJ 33
Portland Managements Ltd v Harte & Ors [1976] 1 All ER 225
Segar Restu (M) Sdn Bhd v Wong Kai Chuan & Anor [1994] 3 MLJ 530
Shell Company of the Federation of Malaya Ltd v Commissioner of the Federal Capital of Kuala Lumpur [1964] MLJ 302
Tan Khien Toong & Ors v Hoong Bee & Co [1987] I MLJ 387
UMW Acceptance & Credit Sdn Bhd v Lahad Datu Timber Sdn Bhd & Ors [1992] 2 CLJ 1085
Verama v Amarugam & Anor [1982] 1 MLJ 107
Yeoh Tiong Lay & Sons Holdings Sdn Bhd v Annavi s/o Mookan & Anor, Dekor Panel Emas Sdn Bhd (intervener) [1994] 3 CLJ 265
Yong Yin Siew v Chong Sheak Thow [1988] 3 MLJ 115

Legislation referred to

Land Enactment No 1 ss 63, 64(i), 65, 66(i)
Land Acquisition Act 1960
National Land Code ss 5, 205(2), (3), 214(1)(a), (c), (d), (e), 214A, 214(2)(b), (c), 214(3)
Rules of the High Court 1980 O 89
Contracts Act 1950 s 57(2)
Supreme Court Practice O 113 [Eng]

Ng Chew Hor and Song Lian Gek (Leng & Co) for the plaintiffs.
Awther Singh (A Singh & Partners) for the defendants.

Abdul Malik Ishak J: All parties agreed that these two originating summonses should be heard together as they involved the same piece of land. For Originating Summons No 24–655 of 1994, a memorandum of appearance dated 23 November 1994 was entered on behalf of one Lim Kim Leung ('Lim') by Messrs Yacob Rakan-Rakan, Advocates and Solicitors, Johor Bahru (encl 9). Whereas a memorandum of appearance with regard to Originating Summons No 24–872 of 1994 was entered on behalf of one Ng Eng Hing ('Ng') on 18 January 1995 (encl 6) by the same solicitors. From the affidavits and the various exhibits annexed therein the facts unfolded as follows. It is not disputed that the plaintiffs in these two originating summonses were the legal registered proprietors of the land comprised under Grant No 26977 for Lot 4271, in the township of Johor Bahru ('the land'). The plaintiffs were registered as the registered proprietors

of the land on 21 January 1994. That land had an initial acreage of 27 acres 0 rood 20 poles but after acquisition by the state government of approximately three acres, the land dwindled in acreage and, at the material time, it measured approximately 24 acres. It is still a big piece of land bearing in mind that it is located in the heart of Johor Bahru. It is germane to mention that the land was previously known as CT 2264 and before that as Malay Grant 1572. By a court order dated 22 January 1949 vide Civil Suit No 20 of 1937, the land was vested in Estate and Trust Agencies (1927) Ltd as trustees for the estate of Syed Hassan bin Ahmad Alattas ('the said estate'). The endorsement of the memorial of the vesting order as ordered by the court was made on the register document of title to the land on 14 May 1949 as reflected in the Malay Grant 1572. This meant that the registered proprietor of the land as from 14 May 1949 was Estate and Trust Agencies (1927) Ltd as trustees for the said estate. The Estate and Trust Agencies (1927) Ltd remained the registered proprietor of the land until 13 January 1981, and thereafter the land was transferred to the following four persons as trustees of the said estate:

(i) Syed Mohamed bin Idroos Alattas;

(ii) Dato' Ungku Mohsin bin Mohamed;

(iii) Syed Ali bin Mohamed Alattas; and

(iv) Syed Hussein bin Salim Alattas.

On 6 May 1981, the land was again transferred and registered to the following four persons and they held the land as trustees of the said estate:

(i) Syed Hussein bin Salim Alattas;

(ii) Syed Salleh bin Abdul Rahman Alattas;

(iii) Syed Abdul Kadir bin Mohd Alattas; and

(iv) Syed Mohd Zain Alattas.

It is pertinent to mention that at no time was the land sub-divided or transferred to any of the beneficiaries of the said estate.

Now, the plaintiffs were desirous of developing the land after they became the registered proprietors and, towards this end, they visited the land and were shocked to discover that there were houses erected on the land occupied by individuals without their permission and/or agreement and, among them was a wooden house (for Originating Summons No 24–655 of 1994) and a partly wooden and partly cemented house together with the wooden stores (for Originating Summons No 24–872 of 1994).

In their affidavits, the plaintiffs deposed that based on valuation reports prepared by M/s Colliers Jordan Lee & Jaafar dated 16 May 1991 as requested by the plaintiffs and that prepared by M/s Param & Associates dated August 1990 as instructed by the trustees of the said estate, the houses found on the land as described earlier were classified as squatters. It was deposed that trespass to the land occurred when the land was left vacant by the plaintiffs' predecessors in title.

Notices of demand dated 8 June 1994 (for Originating Summons No 24–655 of 1994) and 1 July 1994 (for Originating Summons No 24–872

of 1994) were issued by the plaintiffs' solicitors to those persons in occupation of the houses that were built on the land. These notices of demand demanded vacant possession from those persons and, as usual, those persons refused, neglected and/or failed to vacate the houses that were built on the land. The plaintiffs reiterated their desire to develop the land and they deposed that they have no knowledge of the names of all those persons who were in occupation of the houses described earlier.

On these set of facts, the plaintiffs applied under O 89 of the Rules of the High Court 1980 ('RHC') for possession of the land. Order 89 of the RHC provides:

> Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

Pennycuick VC in *Bristol Corp v Persons Unknown* [1974] 1 All ER 593 interpreted O 113 of the English Supreme Court Practice which is in pari materia with our O 89 of the RHC in these words:

> Looking at the words of that rule, it seems to me to be clear that the order covers two distinct states of fact. The first is that of some person who has entered into occupation of the land without the licence or consent of the person entitled to possession or any predecessor in title of his, and secondly that of the person who has entered into occupation of the land with a licence from the person entitled to possession of the land or any predecessor in title of his but who remains in such occupation without the licence or consent of the person entitled to possession or any predecessor in title. That that is the true construction appears to be perfectly clear from the use of the word 'or' and if the rule did not cover the second state of affairs which I have mentioned, that is to say of entry with licence and remaining in occupation without licence, then the words 'or remained' would, so far as I could see, have no significant meaning at all. Obviously there never could be proceedings against someone who had entered but did not remain in occupation of the land.

By way of digression, I must say that the plaintiffs have intituled the originating summonses with the relevant provisions of the law. This was indeed a wise move. In this way, the defendants would not be caught off-guard and would know what to expect and would be able to mould their defences well in advance. The plaintiffs too would be shackled in that they cannot roam elsewhere by shifting from one rule to another or from one law to another, instead the plaintiffs will have no choice but to stick to their intitulement. In the long run the court too would benefit from the mandatory requirement that originating summonses should be intituled. In the same vein, Gopal Sri Ram JCA in *Cheow Chew Khoon (t/a Cathay Hotel) v Abdul Johari bin Abdul Rahman* [1995] 1 MLJ 457 said tersely at p 477 that:

> The plaintiff, as noted earlier, says that if one were to undertake a careful scrutiny of the originating summons and the affidavit in support one would

come to the conclusion that it is not an application made under O 89. The summons does not, as I observed very early in this judgment, state any particular rule of court in its intitulement. Now, I think that that is not only wrong but plainly embarrassing. How, might one ask, is a defendant or the court to determine which rule of court the plaintiff is invoking unless he explicitly specifies it? If a defendant and the court should have to conduct a close examination of the supporting affidavit in each case in order to determine the particular jurisdiction or power that is being invoked by an originating summons or other orginating process that requires an intitulement, then a plaintiff will be at liberty to shift from one rule to another or indeed from one statute to another as it pleases him without any warning whatsoever to his opponent or the court. It would make a mockery of the principle that there must be no surprise in civil litigation. If the submission of counsel be the law, then it is wrong. But I am firmly of the view that it is not.

In my judgment, this matter, which is a point of practice and procedure, is to be resolved by reference to the fundamental principle that a party must not take his opponent or the court by surprise. It is my opinion that an originating process requiring an intitulement must state, with sufficient particularity, either in its heading or in its body, the statute or rule of court under which the court is being moved: otherwise it would be an embarrassing pleading and may be liable to be struck out, unless sooner amended.

Reverting back to the facts, Lim affirmed an affidavit-in-reply dated 6 February 1995 (encl 12) with regard to Originating Summons No 24-655 of 1994 where he claimed ownership of 8,536 sq ft of land which formed part and parcel of the land which has since been registered in the plaintiffs' name. Lim deposed that on his 8,536 sq ft of land stood a row of wooden houses with cement flooring and zinc roofing with postal address No 2, Jalan Tun Abdul Razak, 80000 Johor Bahru, Johor (see the photographs at encl 2 as per exh GWH3. Lim deposed further that his father by the name of Lim Ah Hock had bought that portion (8,536 sq ft of land) from one Syed Ali bin Hassan Alattas ('Syed Ali') on 14 March 1962 vide the written agreement in encl 12 of exh LKL1. It was deposed that the Land Administrator recognized Lim Ah Hock and by a letter dated 23 November 1973 had compensated him in the sum of RM2,000 (see Form H of the Land Acquisition Act 1960 as per exh LKL2 of encl 12). Lim too deposed that he himself received a letter from the Land Office at Johor Bahru informing him to attend the hearing of the acquisition scheduled to be held on 11 November 1982 (exh LKL3 of encl 12). It was also deposed that O 89 of the RHC was not the appropriate cause of action available to the plaintiffs. Lastly, it was averred that presently, the plaintiffs were the registered proprietors of the land and this included that portion of his.

Ng, on the other hand, affirmed an affidavit on 6 February 1995 (encl 7) in Originating Summons No 24–872 of 1994 and there he claimed ownership of 11,625 sq ft of land which formed part and parcel of the land which has since been registered in the plaintiffs' name. On the 11,625 sq ft of land it was said that there was a solitary house but the photographs in exh GWH3 of encl 3 depicted a partly cemented and partly wooden house with zinc roof and wooden stores. Ng deposed in his affidavit that the

A solitary house had a postal address of No 4E, Lorong 2, Jalan Ikhsan, 80100 Johor Bahru, Johor. Ng averred that his father by the name of Ng Chin Hong had bought that portion (11,625 sq ft of land) from Syed Abdullah bin Hassan Alattas ('Syed Abdullah') as reflected in the written agreement dated 27 November 1951 (exh NEH1 of encl 7). Ng then stated that his father had by a written agreement dated 26 October 1954 purportedly transferred that portion (11,625 sq ft of land) to his mother by the name of Tay Chun Moi (encl 7 of exh NEH2) and his mother in turn by a deed of assignment dated 21 November 1977 and a statutory declaration dated 2 August 1992 passed that portion (11,625 sq ft of land) to him. Ng further deposed that the Majlis Perbandaran Johor Bahru registered his name as the owner of premises No 4E, Jalan Ikhsan, 80100 Johor Bahru. Ng also deposed that he caveated that portion but the caveat was removed by the High Court, Johor Bahru on 24 October 1993 vide Civil Suit No 25–24 of 1993. It was said that that portion (11,625 sq ft of land) which formed part and parcel of the land has since been registered in the plaintiffs' name. Finally, it was deposed that O 89 of the RHC was not an appropriate remedy available to the plaintiffs.

As I see it, the plaintiffs' case as against that of the defendants was grounded on trespass. The plaintiffs say as registered owners of the land they were entitled to possession. This brings to mind the speech of Scarman LJ in *Portland Managements Ltd v Harte & Ors* [1976] 1 All ER 225 (CA) where his Lordship, after discussing several authorities, stated the law to be as follows (at p 231):

> I cite those cases in support of the proposition, which appears to me to be clear law, that when an owner of land is making a case of trespass against a person alleged to be in possession, all that the owner has to prove is his title and an intention to regain possession. If the defendant to the action either admits his ownership or is faced with evidence, which the court accepts, that the plaintiff is in fact the owner, then the burden is on the defendant to confess and avoid; that is to say, to set up a title or right to possession consistent with the fact of ownership vested in the plaintiff.

I am grateful to Mr Awther Singh who had on behalf of his clients (Lim and Ng) agreed that O 89 of the RHC was the correct procedure and that his clients were mainly interested in damages. Be that as it may, I felt constrained to consider the whole case and put my thoughts on paper.

Now, since the plaintiffs became registered proprietors of the land on 21 January 1994 both Lim and Ng must show by setting 'up a title or right to possession consistent with the fact of ownership vested' in the plaintiffs. Lim claimed ownership of 8,536 sq ft out of the land in question whereas Ng claimed a bigger portion of 11,625 sq ft out of that land in question. The crucial question to ask is this: Are Lim and Ng the 'owners' of those portions as alleged? Since Lim relied on the written agreement between Lim Ah Hock and Syed Ali dated 14 March 1962, and Ng too relied on the written agreement dated 27 November 1951 purportedly entered between Ng Chin Hong and Syed Abdullah, reference to the Land Enactment No 1 ought to be made. Part V s 62 of the Land Enactment No

1 under the caption 'Registration' starts of by defining certain important words like:

> ... 'dealing' means any transaction, of whatever nature, by which land is affected under this part;
>
> 'land' means land comprised in a grant as hereinbefore in this Part defined, and includes things attached to the earth or permanently fastened to anything attached to the earth;
>
> 'proprietor' means the person or corporation registered under this Part as the owner of the land;
>
> 'transfer' used in connection with land, a lease or a charge, means the passing of such land, lease or charge by act of the parties and not by operation of law; and also the instrument by which such passing is effected.

I will now reproduce verbatim ss 63, 64, 65 and 66 of the Land Enactment No 1 for ease of reference.

> 63 No land shall be capable of being transferred, transmitted, mortgaged, charged or otherwise dealt with except in accordance with the provisions of this Part; and every attempt to transfer, transmit, mortgage, charge or otherwise deal with the same, except as aforesaid, shall be null and void and of no effect; and, in particular, the provisions of s 68 relating to charges shall extend and apply to mortgages of land which have been executed before the coming into operation of this Part, so that the powers in such mortgages mentioned shall be only exercisable in accordance with the provisions of s 68, or as near thereto as circumstances admit.
>
> 64(i) The Commissioner shall keep a book, to be called the 'Register of titles,' and shall bind up therein the duplicates of all grants, and each such duplicate shall constitute a separate folium of such book; and the Commissioner shall record therein the particulars of all instruments, dealings and other matters required to be registered.
>
> (ii) Except as is hereinafter otherwise provided every instrument presented for registration shall be in duplicate, and shall, unless it be a grant, be attested by a witness in the manner provided in s 74, and shall be registered in the order of time in which the same is presented for that purpose; and instruments registered in respect of, or affecting, the same land shall, notwithstanding any express, implied or constructive notice, be entitled to priority according to the date of registration, and not according to the date of each instrument itself; and the Commissioner, upon registration thereof, shall file one original in his office, and shall deliver the other to the person entitled thereto; and, so soon as registered, each instrument shall, for the purpose of this Enactment, be deemed and be taken to be embodied in the register as part and parcel thereof.
>
> 65 No instrument, until registered in [the] manner hereinbefore described shall be effectual to pass any land, or any interest therein, or render such land liable as security for the payment of money; but, upon the registration of any instrument in [the] manner hereinbefore prescribed, the land specified in such instrument shall pass, or, as the case may be, shall become liable as security in manner and subject to the agreements, conditions and contingencies set forth and specified in such instrument;

A but so that nothing contained in this Enactment shall take away or affect the jurisdiction of the court on the ground of fraud.

66(i) When land is intended to be transferred to the registered proprietor, or, if such person is a minor or of unsound mind, the guardian, next friend or other person appointed by the court to act on behalf of the minor or person of unsound mind in the matter, shall execute a transfer, B subtantially in the form contained in Sch M(ii) hereto, which transfer shall, for description of the land intended to be dealt with, refer to the grant of such land, or shall give such description as may be sufficient to identify the same, and shall contain an accurate statement of the land intended to be transferred, and a memorandum of all leases and charges to which the same may be subject, and of all rights of way and easements C intended to be conveyed; and such transfer need not be in duplicate.

(ii) The transfer of a lease or of a charge upon land shall be executed substantially in the form contained in Sch N(ii) hereto. Every such transfer must be registered, and transferees shall have priority according to the date of registration. Such transfers need not be in duplicate.

D Since Lim relied on the agreement of sale (exh LKL1 of encl 12) entered into between his father and Syed Ali with regard to the sale of a portion of that land, it is appropriate to set out hereinafter that agreement of sale in extenso:

AN AGREEMENT made on 14 March 1962, between Syed Ali bin Hassan E Alattas of No 122B, Jalan Ngee Heng, Johor Bahru (hereinafter referred to as the Vendor) of the one part and Lim Ah Hock of No 45, Jalan Trus, Johore Bahru (hereinafter called the Purchaser) of the other part.

WHEREAS the Vendor is one of the lawful sons of Syed Hassan bin Ahmad Alattas deceased (hereinafter referred to as the said deceased Testator).

F AND WHEREAS under the Deed of Family Arrangement made between the Beneficiaries and the Trustees of the Estate of Testator dated 10 September 1959 and approved by an order of court dated 17 September 1959, the Vendor as a Beneficiary is entitled to 2/19ths share in value of all the lands referred to in sub-clause 8(e) of the said Deed of Family Arrangement.

G AND WHEREAS by virtue of the terms and provisions of the said Deed and by way of Arrangement between the Beneficiaries, it has been that as part of the Vendor's allotment, the Vendor is entitled to a piece of land comprised in part of Certificate of Title 2264 Government Surveyed Lot No 4271, situated at Jalan Ngee Heng, Johore Bahru now more clearly shown edged red according to revised sketch plan annexed hereto measuring H about 14,336 sq ft (hereinafter referred to as the said portion of land).

AND WHEREAS the Vendor has agreed to sell and the Purchaser has agreed to buy the said portion of land at and for the price of Dollars Five thousand three hundred and fifty ($5,350) only.

NOW IT IS AGREED BETWEEN THE PARTIES HERETO as follows:—

I 1 In consideration of the sum of Dollars Three thousand three hundred and fifty ($3,350) already paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor hereby agrees to sell and assign the said portion of land to the Purchaser

at and for the price of Dollars Five thousand three hundred and fifty ($5,350) only.

2 The balance of the purchase money of Dollars two thousand ($2,000) only shall be paid by the Purchaser to the Vendor by monthly instalments of Dollars Two hundred ($200) only.

3 The first of the instalment of Dollars Two hundred ($200) only shall be paid by the Purchaser to the Vendor on or before 1 April 1962. The second (2nd) and subsequent instalment payments shall be paid by the Purchaser to the Vendor on or before the 1st of every calendar month thereon.

4 As soon as the transfer of the said land to the Vendor has been completed (subject to the provisions of the Deed of Family Arrangement and clauses 2 and 3 of this Agreement) having been carried out on the part of the Purchaser, the Vendor will execute the necessary transfer of the said land to the Purchaser.

5 Stamp fees and costs of the final transfer of the said portion of land shall be borne by the Purchaser.

IN WITNESS WHEREOF the parties have hereunto set their hands the day and year first above written.

SIGNED and DELIVERED)
by the abovenamed Syed Ali) (Illegible, in Jawi)
bin Hassan Alattas) —Sgd—
(I/C No 0002425))
in the presence of:)
(Illegible)
—Sgd—

SIGNED and DELIVERED)
by the abovenamed Lim Ah)
Hock (I/C No J No 553578)) (Illegible)
in the presence of:) —Sgd—
(Illegible)
—Sgd—

Lim's affidavit in reply in encl 12 averted to his right over 8,536 sq ft out of the land in question whereas the agreement of sale in exh LKL1 referred to 14,336 sq ft. There was no nexus between the two and neither was there an application to amend those paragraphs. This must surely be held against Lim. Several observations need to be made with regard to the agreement of sale dated 14 March 1962 and these may be summarized as follows:

(1) It was not executed by the then registered proprietor of the land namely, Estate and Trust Agencies (1927) Ltd who were the trustees of the said estate in 1962;

(2) It was only on 13 January 1981 that Syed Ali became one of the four trustees of the said estate and in that capacity he and three others were the registered proprietors of the land;

(3) Lim's father purportedly purchased 8,536 square feet out of the total acreage of the land but there was no grant to that portion. This being

A the case, it did not come within the ambit of Pt V, s 62 of the Land Enactment No 1 where land has been defined to mean the land comprised in a grant. There was no provision in the Land Enactment No 1 for the transfer or passing of title to part only of land (here 8,536 sq ft) comprised within a grant;

B (4) Since Syed Ali was not the registered proprietor of the land wherein that 8,536 sq ft stood on 14 March 1962, an instrument of transfer in substantially the same form as that contained in Sch M of s 66(i) of the Land Enactment No 1 was never executed by him. Without that instrument of transfer, Lim's position would be weakened;

C (5) The relevant land authority, on 14 March 1962, did not record the particulars of the sale of that 8,536 sq ft in the 'Register of titles' as envisaged under s 64(i) of the Land Enactment No 1 and, consequently, the provisions of ss 63 and 65 of the Land Enactment No 1 would automatically operate and the following consequences would flow thereunder:

D (a) since there was no registration of the 8,536 sq ft by the relevant authority, there was no effectual passing of that portion from Syed Ali to Lim's father under s 65 of the Land Enactment No 1; and

(b) since there was no instrument of transfer following the appropriate E format as contained in Sch M of s 66(i)of the Land Enactment No 1, that portion of land was not capable of being transferred and any attempt to transfer that portion 'shall be null and void and of no effect' (s 63 of the Land Enactment No 1).

It is appropriate to mention here that Pretheroe Ag CJ in *Johore Para* F *Rubber Company Ltd v Registrar of Companies, Malayan Union* [1948] MLJ 135 had occasion to consider ss 63 and 65 of the Land Enactment No 1 with regard to the validity of a charge. This was what his Lordship said:

> These sections make it abundantly clear that in the State of Johore, whatever agreement may be executed, and by whatsoever name the document G evidencing the agreement may be called, no land can be charged until the transaction is registered in conformity with the provisions of Pt V of the Land Enactment. Furthermore, for the purposes of that Enactment any attempt to create a charge on land except by registration 'is null and void and of no effect', though doubtless for other purposes the execution of such a document would serve to create certain rights and liabilities. Now as a H charge on land in the State of Johore can only be created in one manner ie by registration, it is clear that such [a] charge can only come into existence at the time registration is effected.

If those agreements entered between Lim's father and that of Ng's father 'as an interest therein' were registered under the Land Enactment No 1, a I different complexion would be added to it. But this was not the case here.

For the reasons adumbrated above, I have no hesitation to hold that the purported sale did not pass that portion to Lim's father as the whole exercise was null and void and of no effect. That purported sale was not capable of being enforced as Syed Ali had no legal authority to sell that

portion. That portion had no grant and, bereft of a grant, Lim's father did not acquire an indefeasible title to it. It follows therefore that Lim did not have a stake on that portion at all.

Ng's father entered into an agreement of sale with Syed Abdullah on 27 November 1951 (encl 7 of exh NEH1) with regard to a portion of that land. On 26 October 1954, Ng's father transferred that portion by a written agreement to Ng's mother (encl 7 of exh NEH2). By a deed of assignment dated 21 November 1977 (encl 7 of exh NEH4) and a statutory declaration dated 2 August 1992 (encl 7 of exh NEH3), Ng's mother transferred that portion to him. Since Ng relied heavily on exhs NEH1, NEH2, NEH3 and NEH4, to say that a good title had passed from his father to that of his mother and eventually to him, these exhibits are now reproduced hereinunder for ease of reference:

On exhibit NEH1

AN AGREEMENT made this 27 November 1951 between Syed Abdullah bin Hassan Alattas of No.52B, Jalan Ngee Heng, Johore Bahru (hereinafter called the Vendor) of the one part and Ng Chin Hong of No 2, Jalan Abdullah Ibrahim (Kampong Pahang) Johore Bahru (hereinafter called the Purchaser) of the other part.

WHEREAS the vendor is one of the beneficiaries of the Will of Syed Hassan bin Ahmad Alattas (hereinafter referred to as the said deceased).

AND WHEREAS by virtue of a Distribution Arrangement made between the beneficiaries of the said deceased, the Vendor became entitled to part of land held under Malay Grant No 1572, Lot No 77 situate at Jalan Ngee Heng, Johore Bahru.

AND WHEREAS the Vendor has agreed to sell and the Purchaser is willing to buy a portion of the land measuring 1 rood 03 poles (11,625 sq ft) from the Vendor as shown and more particularly referred in the attached sketch plan and marked as Lot 62A in red at the price of $4,417.50.

NOW THIS AGREEMENT WITNESSETH as follows:

1 In consideration of the sum of $3,300 (Dollars Three thousand and three hundred only) paid by the Purchaser to the Vendor by way of deposit (the receipt of which sum the Vendor hereby acknowledges), the Vendor hereby agrees to sell the aforesaid portion of land measuring 11,625 sq ft forming part of Malay Grant No 1572, Lot No 77, to the Purchaser for the sum of $4,417.50 (Dollars Four thousand four hundred and seventeen and cents fifty).

2 The purchase shall be completed within one month from the time when the Vendor shall have given written notice to the Purchaser of his readiness to execute an agreement of Sale & Irrevocable Power of Attorney in favour of the Purchaser in respect of the aforesaid portion of land provided always that the Purchaser shall be entitled to refuse to complete the purchase herein until the Distribution Agreement of the property of the said deceased shall have been signed by all the beneficiaries of the said deceased.

3 Upon completion of the Purchase as aforesaid, the balance of the purchase money of $1,117.50 (Dollars One thousand one hundred and seventeen and cents fifty) shall be paid by the purchaser to the Vendor.

4 As soon as the aforesaid portion of land shall become vested in the Vendor, the Vendor shall apply to the Government for sub-division. The purchaser shall bear the cost of the issue of a grant for the said portion of land and the survey fees for the sub-division including cost of boundary stones.

5 It is hereby agreed that if there shall be a difference between the area as it appears on the sketch plan hereto attached and as it may appear as a result of the Government survey thereof the Purchaser agrees to pay for any excess and the Vendor agrees to refund at the rate of 38 cents per sq ft as the case may be.

6 The cost of this Agreement and the Agreement of Sale & Irrevocable Power of Attorney or Transfer to be executed by the Vendor including stamp and registration fees shall be paid by the Purchaser.

7 It is agreed that the Agreement of Sale & Irrevocable Power of Attorney shall be executed before the Collector of Land Revenue or Assistant Collector of Land Revenue.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands on the day and year first above-written.

Signed by the abovenamed)
Syed Abdullah bin Hassan) (In Jawi script)
Alattas in the presence) —Sgd—
of:)
—Sgd—
COLLECTOR OF LAND REVENUE
JOHORE BAHRU

Signed by the abovenamed)
Ng Chin Hong in the) (In Chinese characters)
presence of:) —Sgd—
—Sgd—
COLLECTOR OF LAND REVENUE
JOHORE BAHRU

On exhibit NEH2

WHEREAS I Ng Chin Hong of No 1-E, Jalan Ngee Heng, Johore Bahru am the lawful husband of Teh Choon Moi of No.4-E, Jalan Ngee Heng, Johore Bahru AND WHEREAS in consideration of love and affection shown to me by my wife the said Teh Choon Moi I hereby transfer unto the land mentioned in an agreement dated 27 November 1951 and made between myself as Purchaser of the one part and Syed Abdullah bin Hassan Alattas of No 52-B, Jalan Ngee Heng, Johore Bahru as Vendor of the other part together with one dwelling house erected thereon and known as No 4-E, Jalan Ngee Heng, Johore Bahru TO HOLD the same unto the said Teh Choon Moi for her sole use and benefit ABSOLUTELY.

For the purpose of stamp duty I value the land and house at $14,000 (Fourteen thousand dollars only).

Dated this 26 October 1954.

SIGNED by the)

abovenamed Ng Chin Hong) (Illegible Chinese characters) A
in the presence of:) —Sgd—
—Sgd—
Asst Collector of Land Revenue,
Batu Pahat
Identified by:
(Illegible Chinese characters) B
—Sgd—
Ng Chung

Known to:
—Sgd—
Ng Boon Ching C

On exhibit NEH3

PENGISYTIHARAN STATUTORI

Saya, Tay Ah Moi (K/P No 0055175) dari No 4E, Jalan Ngee Heng, Lorong 2, 80000 Johore Bahru, Johore, dengan tulus ikhlas dan sesungguhnya mengakui bahawa:— D

1 Saya adalah tuanpunya yang sah rumah kediaman yang bernombor No 4E, Lorong 2, Jalan Ngee Heng, 80000 Johore Bahru (sekarang di kenali sebagai No 4E, Jalan Ikhsan, 80100 Johor Bahru, Johor) yang terdiri di atas sebahagian tanah Lot 4271 ('rumah tersebut'). E

2 Pada 21 November 1977, secara Surat Ikatan Menyerah Hak ('Deed of Assignment') saya telah menyerah hak ke atas rumah tersebut kepada anak lelaki saya bernama Ng Eng Hing (sesalinan fotostat 'Deed of Assignment' bertarikh 21 November 1977 di sertakan bersama-sama ini dan di tanda sebagai 'TAM 1').

3 Nama saya juga dikenali sebagai Teh Choon Moi dan Teo Choon Moi sebagaimana yang tercatit di dalam Bil Cukai Pintu MPJB (sesalinan fotostat Bil Cukai Pintu MPJB di sertakan bersama-sama ini dan di tanda sebagai 'TAM 2'). F

4 Ketiga-tiga nama yang tersebut di atas dengan ejaan Tay Ah Moi, Teh Choon Moi dan Teo Choon Moi adalah nama bagi satu orang sahaja dan adalah orang yang sama iaitu saya. G

5 Saya membuat pengisytiharan statutori ini bagi maksud memfailkan Borang I di MPJB untuk mendaftarkan anak saya Ng Eng Hing sebagai tuanpunya yang sah rumah tersebut.

Dan saya membuat pengisytiharan statutori ini dengan penuh kepercayaan bahawa apa-apa yang tersebut di dalamnya adalah benar serta menurut Akta Akuan Berkanun 1960. H

DIPERBUAT dan dengan)
sebenarnya DIAKUI oleh)
TAY AH MOI yang tersebut) RTP I
di atas di Johor Bahru) .....
pada 2 Ogos 1992) (No K/P: 0055175)

DI HADAPAN SAYA
—Sgd—
Pesuruhjaya Sumpah
No 10
Nama: Gan Kim Sing

On exhibit NEH4

DATED THIS 21ST DAY OF NOVEMBER 1977

Between

TAY AH MOI (f) ... the Assignor

And

NG ENG HING ... the Assignee

@@@@@@@@@@@@@@@@@@@@@@@@@@@@@@

DEED OF ASSIGNMENT

@@@@@@@@@@@@@@@@@@@@@@@@@@@@@@

GKS/E/L 77438

KUMPULAN GAN & LIM
ADVOCATES & SOLICITORS
1ST FLOOR, BANGUNAN KERJASAMA
JALAN DHOBY, JOHOR BAHRU
TEL NOS: 54224 & 53300

THIS DEED OF ASSIGNMENT made the 21st day of November, One thousand Nine hundred and Seventy-seven (1977) Between TAY AH MOI (F) (I/C No: 0055175) of 4E, Jalan Ngee Heng, Johor Bahru, Johore (hereinafter called 'the Assignor') of the one part And NG ENG HING (I/C No: 4117908) of 4E, Jalan Ngee Heng, Johore Bahru, Johore (hereinafter called 'the Assignee') of the other part.

WHEREAS

I By a Deed of Assignment made the 26th day of October 1954 Between one Ng Chin Hong @ Ng Hock (I/C No: 0004790) of the one part And the Assignor of the other part, the said Ng Chin Hong @ Ng Hock assigned all that piece of land together with the house No 4E, Jalan Ngee Heng, Johore Bahru, Johore erected thereon to the Assignor to hold the same unto the Assignor absolutely.

II The Assignor being the beneficial owner of the said land and the house No 4E, Jalan Ngee Heng, Johore Bahru (hereinafter referred to as the said property) is desirous of assigning and the Assignee is desirous of accepting the assignment of the said property upon the following terms and conditions.

NOW THIS DEED WITNESSETH as follows:

1 In consideration of love and affection, the Assignor hereby assigns all her right title and interest in the said property to the Assignee to hold the same unto himself absolutely.

2 The Assignee shall be entitled to possession of and to the profits and enjoyment of the said property as from the date hereof.

3 This Deed shall be binding upon the heirs, executors, assigns and successors in title of the parties hereto.

IN WITNESS WHEREAS the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED and)
DELIVERED by the) RTP
abovenamed Assignor) .....
TAY AH MOI (f) in) I/C No: 0055175
the presence of:)
—Sgd—
GAN KIM SING
ADVOCATES & SOLICITORS
States of Malaya & Singapore

SIGNED SEALED and)
DELIVERED by the) —Sgd—
abovenamed Assignee) .....
NG ENG HING in the) I/C No: 4117908
presence of:
—Sgd—
GAN KIM SING
ADVOCATES & SOLICITORS
States of Malaya & Singapore

In so far as exhs NEH1, NEH2, NEH3 and NEH4 are concerned, the same germane observations made in regard to the agreement of sale entered between Lim's father and Syed Ali would apply and for fear of repetition, I need not repeat them here. Suffice for me to say that Syed Abdullah had no legal authority to sell that portion to Ng's father on 27 November 1951 because on that date the whole portion of the land was registered in the name of Estate and Trust Agencies (1927) Ltd. Unlike Syed Ali, Syed Abdullah was never appointed as one of the trustees to the said estate. Just like Lim, Ng too did not acquire a stake on that portion at all.

One common thread that runs through the two originating summonses is this. The interests of Lim's father and that of Ng's father were not registered as provided for under s 65 of the Land Enactment No 1 and since those portions were not dealt with in accordance with Pt V of the Land Enactment No 1, the agreements that were entered between the parties must be regarded as null and void and of no effect within the meaning of s 63 of the Land Enactment No 1.

Both Syed Ali and Syed Abdullah were beneficiaries of a trust property and in that capacity they lack authority to enter into a legally enforceable

A contract to sell that trust property. Only the registered proprietor, and at that material time it was Estate and Trust Agencies (1927) Ltd, who has the authority to sell the land. I am fortified in my view by the passages appearing in the judgment of Mahadev Shankar J (now JCA) in *Yeoh Tiong Lay & Sons Holdings Sdn Bhd v Annavi s/o Mookan & Anor, Dekor Panel Emas Sdn Bhd (Intervener)* [1994] 3 CLJ 265 where his Lordship said at p 271:

> The trustees were the registered proprietors. Nesa was the legal owner of the said land.
>
> In these circumstances who had the power to sell the said land? It is trite law that only the legal owner or the registered proprietor has the power to sell—not one or more beneficiaries under the trust, anymore than a shareholder in a company or one of the next of kin in a deceased estate can enter into a valid contract to sell the assets of the company or the estate of the deceased. Even if all such beneficiaries entered into such a contract that contract would be void for the mere reason that the beneficiaries have no vested legal right to the said land. They have no capacity to contract any valid sale. Only the trustees being the legal owners can contract.

As stated earlier, from 22 January 1949 to 13 January 1981 the land was registered in the name of Estate and Trust Agencies (1927) Ltd who were the trustees of the said estate. What Syed Ali and Syed Abdullah did cannot be given legal sanctity for three simple reasons:

(1) they were not the registered proprietors;

(2) there was no evidence that the other beneficiaries to the said estate had agreed to the purported sale of those pieces to Lim's father and to Ng's father; and

(3) there was no evidence that the trust instrument has been terminated.

It is indeed unfortunate that Lim's father and Ng's father bought those portions as the agreements as exhibited in the affidavits cannot be enforced legally nor can they pass legal titles or interests to those portions based on those agreements.

Reverting back to Ng's matter, the written agreement entered between Ng's father and Syed Abdullah (exh NEH1) in regard to that portion, on the one part, and between Ng's father and Ng's mother by way of a Deed of Assignment (NEH2), on the other part, cannot vest that portion to Ng's father nor to Ng's mother as those exercises run counter to the Land Enactment No 1. Ng's mother could not assign that portion as there was nothing to assign in the first place. The written agreement (NEH1) being null and void, everything that flows thereunder must likewise suffer from the same impediment—a total nullity. Ng failed to show that the purchase of that portion by his father emanated from Estate and Trust Agencies (1927) Ltd nor was there evidence that NEH1 was executed substantially in accordance with the form as set out in the Sch M of s 66(i) of the Land Enactment No 1 nor was such purported sale registered within the meaning of s 64 of the Land Enactment No 1. Consequently, Ng must suffer the same fate as that of Lim.

Next, both Lim and Ng sought to lay claims to a part only of the alienated land. Lim claimed for 8,536 sq ft while Ng laid a stake for 11,625 sq ft. Section 214 of the National Land Code 1965 ('NLC') prohibits the transfer of a part of any alienated land and that section is worded thus:

> 214(1) Subject to sub-s (2), the following shall be capable of transfer under this Act—
>
> (a) the whole, but not a part only, of any alienated land.

It may perhaps be asked: What are capable of being transferred under the NLC? The answers would be:

(1) the whole of alienated land (s 214(1)(a) of the NLC);

(2) the whole of any undivided share in alienated land (s 214(1)(b) of the NLC);

(3) any lease of alienated land (s 214(1)(c) of the NLC) and it must necessarily include any sub-lease of alienated land (see the definition of a 'lease' under s 5 of the NLC where lease is defined to mean a registered lease or sub-lease of an alienated land);

(4) any charge (s 214(1)(d) of the NLC); and

(5) any tenancy exempt from registration (s 214(1)(e) of the NLC).

It is germane to remember that such powers of transfer are exerciseable subject to any prohibition or limitation imposed by the NLC itself or by any other written law for the time being in force. Thus, s 205(2) of the NLC speaks of the categories of persons and bodies in whose favour such transfers may be effected. Section 205(3) of the NLC lays down the prohibition on the joint ownership of agricultural land where the area of any resulting individual portion on partition of such land be less than two-fifths of a hectare. The restriction imposed on the transfer of estate land to two or more persons without the prior approval of the Estate Land Board as envisaged under s 214A of the NLC must also be considered. It must not be forgotten that generally the powers of transfer as conferred by the NLC are subject to 'any restriction in interest to which the land in question is for the time being subject' (s 214(2)(b) of the NLC) and this must necessarily include any prohibition on the transfer of the land in question without the prior written approval of the State Authority. Then again, with regard to 'leases, charges and tenancies exempt from registration' they are 'subject to the express or implied provisions thereof' as envisaged under s 214(2)(c) of the NLC. Finally, in so far as leases and charges are concerned they may be transferred to two or more persons or bodies as trustees or representatives to be held by them jointly (s 214(3) of the NLC).

Reverting back to the issue at hand, it is abundantly clear that the NLC prohibits totally the transfer of a part of any alienated land or a part of an undivided share in that land. Now, even if one were to go to an extreme to say that Lim's father and Ng's father contracted to purchase those parts or portions from Estate and Trust Agencies (1927) Ltd, which is not the case here, that is clearly barred under s 214(1)(a) of the NLC.

As the facts stand, both Lim's father and Ng's father purchased those parts or portions from Syed Ali and Syed Abdullah respectively and clearly under the Land Enactment No 1 that would be barred as, at the material time, the registered proprietor of the land was Estate and Trust Agencies (1927) Ltd and the Land Enactment No 1 as it then stood prohibited the transfer of a part of the alienated land. Either way, no matter how one argues for Lim and Ng, the result would be the same. Lim and Ng have no registrable interests on those parts or portions as they claimed they had.

The rationale for imposing a prohibition to transfer a part of the alienated land stems from quite an obvious reason. As a matter of practice since there is only one title issued in respect of an alienated land whether held by a single proprietor or otherwise, it follows that a transfer of part of that alienated land cannot be effected unless and until separate title has been issued in respect of the part of the land which is sought to be transferred. A separate title can only be issued on such part of the land upon sub-division of the said land. If the land is held under co-proprietorship, a transfer of a part of an undivided share can be done by partitioning land into respective portions according to the undivided share which each of the co-proprietors hold in respect of the land and issuing separate titles to each of the partitioned portion formerly held together under one title. In *Peter Lai Khee Chin & Anor v Collector of Stamp Duties* [1973] 2 MLJ 33 it was held, inter alia, that a transfer of the whole of the land to oneself and another in equal undivided share therein was not a transfer of a part only of the land. The facts, there were that Peter Lai Khee Chin ('the first appellant'), being desirous of making a gift inter vivos of an undivided half interest in his land held under QT (M) 115, Lot No 131 Mukim of Ampang, Kuala Lumpur to his wife Susie Chen Moi Ching ('the second appellant'), executed a memorandum of transfer dated 19 July 1972 whereby he transferred the whole of his interest in the said land to himself and his wife in undivided equal shares. He resorted to this device of conveying the whole of his land to himself and his wife because s 214(1)(a) of the NLC provides that the whole, but not a part only, of any alienated land shall be capable of transfer under the Code. The Collector of Stamp Duty assessed the stamp duty on the whole of the market value of the land. The appellants did not dispute the Collector's assessment of the market value of the land or that stamp duty was payable on the value of the half share of the land transferred to the wife but they contended that stamp duty was not payable on the value of the other half share. It was held, inter alia, that as no beneficial interest passed in the half share under the transfer from the first appellant to himself, stamp duty was only payable on the transfer of a half share in the land, that being the value of the only beneficial interest which passed under the title. Of pertinence, Gill FJ had this to say in that case (at p 34 right hand column between C to E):

> I do not think that the Collector was right in the view which he took as regards the stamp duty payable on the transfer. He is clearly not concerned with the question as to whether the transfer in question contravenes any of the provisions of the National Land Code. That is a matter for the appropriate

> authority when the transfer is presented for registration. In any event, this was not a transfer of the whole of the land from the first appellant to himself. It was a transfer from himself to himself and his wife so as to make them both co-owners of the property in undivided equal shares. As far as I can see the only prohibition imposed by s 214(1)(a) of the National Land Code is that you cannot transfer a part only of any alienated land. It would therefore be correct to say that the transfer in question does not contravene the provisions of that section.

Peter Lai Khee Chin & Anor v Collector of Stamp Duties is a clear example of how the prohibition against transferring a part only of the land (s 214(1)(a) of the NLC) can be circumvented by the registered proprietor by transferring the land to the intended transferee (his wife) and himself as co-proprietors in undivided shares. But with respect, as I see it the transaction effected in *Peter Lai Khee Chin & Anor v Collector of Stamp Duties* was not in relation to a part of the land. It was instead in relation to the whole of the land with his wife and himself having, after the transfer, equal undivided shares therein. Seen in that perspective, there was thus no necessity to issue separate titles in respect of any part of the land with the consequence that the transaction effected did not run foul of the prohibition under the NLC against transferring a part only of the land in question.

Thus, Lim by claiming a part of the land (only 8,536 sq ft) is in fact and in law trying to have transferred to him that part on that portion and this is the very thing that is prohibited by s 214(1)(a) of the NLC. Ng too purportedly acquired a part of the land (11,625 sq ft) by way of a deed of assignment dated 21 November 1977 (NEH4) from his mother and under that deed the mother purportedly assigned 'all her right title and interest in the said property' to her son, Ng. That deed of assignment is clearly caught by the prohibition under s 214(1)(a) of the NLC and since it was not made in accordance with Form 14A of s 215 of the NLC it is not capable of being registered either. Now, even assuming that Teh Chooi Moi (the mother of Ng) had acquired an interest in that part or portion, the pertinent question to ask would be this: Whether the deed of assignment ('NEH 4') is effective in passing title to that part to Ng? The answer would still be in the negative as it still contravenes s 214(1)(a) of the NLC and clearly illegal and unenforceable in law.

Next, on 21 January 1994 when the plaintiffs purchased the land from the surviving trustees of the said estate, both Lim and Ng were not involved in the transactions. Both Lim and Ng were not parties to that contract. As strangers to the contract they cannot now say that they should benefit from that contract (see *Kepong Prospecting Ltd & Ors v Schmidt* [1968] 1 MLJ 170; *UMW Acceptance & Credit Sdn Bhd v Lahad Datu Timber Sdn Bhd & Ors* [1992] 2 CLJ 1085; *Borneo Housing Mortgage Finance Bhd v Personal Representatives of the Estate of Lee Lun Wah Maureen & Anor* [1994] 1 MLJ 209 and *Mohd Ali Jahn bin Yusop Sahibjahn & Anor v Zaleha bte Mat Zin & Anor* [1995] 1 CLJ 533).

On the question of the payment of the quit rent, it was argued that the Land Administrator had pursuant to a land acquisition exercise issued a notice under Form H (exh LKL2 in encl 12) to Lim and offered him

compensation. There was also a notice from the Land Office Johor Bahru notifying Lim as the tenant of the hearing of the acquisition (exh LKL3 in encl 12). Lim sought to rely on these two documents to support the contention that quit rent had been paid by him. Ng too relied on a document from the Majlis Perbandaran Johor Bahru (exh NEH5 in encl 7) where the receipt for quit rent bore his name. It is my judgment that the payments of quit rent by both Lim and Ng can never give them titles to those parts or portions of the land. Mustapha Hussin J in *Yong Yin Siew v Chong Sheak Thow* [1988] 3 MLJ 115 said at p 118 that:

> The defendant had produced receipts for payment of quit rent in respect of the land in question. The fact of who pays the quit rents for the land does not point to who is the owner of the land. Anyone can go and pay the rents, as is usually done by those in occupation either by way of lease, or rent or by sheer squatting.

The same approach was adopted by Mohd Noor bin Hj Ahmad J in *Mohd Ali Jahn bin Yusop Sahibjahn & Anor v Zaleha bte Mat Zin & Anor*. I venture to say that payments of quit rents, assessment rates, electricity and water bills cannot be used as barometers to gauge ownership of lands without cogent supportive evidences in that direction. It is the court that will decide the question as to the ownership of the land. Section 5(c) of the NLC defines land as 'all things attached to the earth or permanently fastened to any thing attached to the earth whether on or below the surface'. As stated earlier, s 62 of the Land Enactment No 1 defines land as 'land comprised in a grant as hereinbefore in this Part defined, and includes things attached to the earth or permanently fastened to anything attached to the earth'. The photographs annexed to the affidavits of both Lim and Ng clearly show that the houses built on those parts or portions of the land were permanently fastened to the earth.

Blackburn J in *Holland v Hodgson* (1872) LR 7 CP 328 observed at p 335:

> ... articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to show that they were intended to be part of the land, the onus of showing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue as a chattel, the onus lying on those who contend it is a chattel.

In the *Shell Company of the Federation of Malaya Ltd v Commissioner of the Federal Capital of Kuala Lumpur* [1964] MLJ 302, the question was raised as to whether underground storage tanks for petroleum were land and thus rateable. The High Court found that they were for the following reasons (see p 304) :

> The tanks, when placed underground, were intended to remain in situ for as long as the filling stations continue in operation. They are liable to be disturbed and replaced only in case an increase of storage capacity becomes necessary. Hence their attachment to the earth is, for all practical purposes,

> as permanent as the buildings erected on the filling stations. Their removability, when severance reconverts them into chattels or movable property, does not alter the fact of their integration with the land upon attachment thereto.

In *MBf Finance Bhd v Global Pacific Textile Industries Sdn Bhd (in receivership) & Anor* [1994] 2 AMR 1084, I said (see p 1091):

> It is now trite law that where movables or chattels have been so affixed to land or to buildings on the land with the intention that it is to become part of the land, the chattel loses its nature as a movable and becomes an immovable or fixture and thus land. What is crucial to decide here is this: Whether the dyeing machines form part of the land and acquire the character of a fixture? That land comprises fixtures is clear from the definition of 'land' in s 5 of the National Land Code 1965 which includes:
>
> > '... all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface'.

Insofar as these houses in these two originating summonses are concerned, I have no hesitation to rule that these houses are part of the land and the ownership thereof vests with the owner of the land namely, the plaintiffs.

The agreements entered between Lim's father and Syed Ali and that of Ng's father with Syed Abdullah can best be described as frustrated because the change in circumstances rendered those agreements impossible of performance. The doctrine of frustration 'is only a special case of the discharge of contracts by an impossibility of performance after the contract was made' (*Joseph Constantine Steamship Line Ltd v Imperial Smelting Corp Ltd* [1942] AC 154). Lord Radcliffe in *Davis Contractors Ltd v Fareham UDC* [1956] AC 696 observed that (at p 729):

> ... frustration occurs whenever the law recognises without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract.

Section 57(2) of the Contracts Act 1950 enacts the doctrine in the following terms:

> A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Since the plaintiffs are now the registered proprietors of the land and they were not parties to the agreements, those agreements must in law be considered frustrated. The frustration can be appreciated if one bears in mind that the signatories of the agreements intended to transfer certain parts of the alienated land which as explained earlier would be prohibited by s 214(1)(a) of the NLC.

For fear of repetition, on O 89 of the RHC, I adopt what Syed Ahmad Idid J said in *Lajahim bin Sinabong v Napsiah bte Awang Atan* [1993] 2 AMR Supp Rep 574 especially at p 576:

And Romer LJ, in discussing *Shields'* case (*John Shields & Co (Perth) Ltd v Inland Revenue Commissoners* (1950) SC 441, 29 Tax Cas 475), said: A

> 'The essential fact is that the voting control was held to reside in Mrs Bell notwithstanding that as a trustee she could only properly record a vote with the unanimous concurrence of her co trustees and that in that sense her voice was the voice of them all.'

B

These observations show that the unanimity rule is so well established that it is taken for granted. The rule is stated in a number of authorities which were cited in this case: in *Luke v South Kensington Hotel Company* (1879) 11 Ch D 121 where Jessel MR, said at pp 125–126:

> 'But two out of three trustees have no power to bind cestuis que trust. There is no law that I am acquainted with which enables the majority C of trustees to bind the minority. The only power to bind is the act of three ... '

in *In re Flower and Metropolitan Board of Works* (1884) 27 Ch D 592, where Kay J, said at p 596:

> 'The theory of every trust is that the trustees shall not allow the trust D moneys to get into the hands of any one of them, but that all shall exercise control over them.'

In another part of his judgment Good J said:

> The principle is thus clear, but great difficulty often arises in giving effect to it when co-trustees cannot agree. In *Tempest v Lord Camoys* (1882) 21 E Ch D 571, some of the testator's family were desirous of purchasing a mansion, to be paid for partly by the application of trust moneys in Court and partly by mortgage. One of the trustees approved of the scheme, but the other refused to concur. The willing trustee and the remainder man joined in a petition that the purchase might be carried into effect. The Court of Appeal, affirming the decree of Chitty J, on the petition, held that the Court F could not control the dissentient trustee in the exercise of his discretion in refusing to make the purchase, or in refusing to exercise his power of raising money by mortgage for the proposed purpose. It follows from that decision, which though not strictly binding on this Court is of such authority that it would be impossible to disregard it even if one were so disposed, that I cannot grant the relief asked for in the surviving prayer in the summons, G which would amount to coercing the 1st defendant into exercising his discretion in a particular way, and which is precisely what the Court refused to do in *Tempest v Lord Camoys* (supra).

Applying the above principles to the facts of the present case, without the concurrence of the remainder of the co-trustees acting in unison, what H Syed Ali and what Syed Abdullah did were wrong and, consequently, cannot bind the co-trustees of the said estate.

I have said in *Segar Restu (M) Sdn Bhd v Wong Kai Chuan* [1994] 3 MLJ 530 to the following effect, and which must surely apply to the facts of the present case when seen from the perspective of the plaintiffs who have since acquired registered proprietorship of the land: I

> Reading the pleadings, one would be able to detect the element of trespass. Who is a trespasser? In law, a trespasser is one who wrongfully enters on land in the possession of another, and has neither right nor permission to be

I have considered the case of *Westland Sdn Bhd lwn Tan Eng Hock* [1992] 1 CLJ 645 where the court held that in an appropriate case the order under O 89 can be granted. It was held in *Sidek bin Haji Muhamed & Ors* [1982] 1 MLJ 313 that 'squatters have no right either in law or in equity'. The court in *Kabla Holdings Sdn Bhd v Ahmad bin Shahlan & Ors and Other Persons Unknown* [1992] 2 CLJ 817 held that 'having found that the defendants are illegal squatters, order of possession should be granted to plaintiff.'

Even conceding that [the] defendant had been in occupation prior to 1971, is her continued occupation with the consent of plaintiff who is the registered owner of the land? See Kota Kinabalu High Court decision in Originating Summons No K 92 of 1988 *Haji Mohammad Jati bin Matusin v Lucy bte Daeh & Ors*. See s 116 of the Evidence Act 1950. O 89 r 1 means that where entry is legal, continued occupation may not be so.

Our courts have consistently subscribed to the principle that one who has the right to enter upon another's land and acts in excess of this right or after his right has expired is a trespasser.

On equity, it is now trite that our land laws are governed by the NLC which does not allow the law to be tempered with equity (*Verama v Amarugam & Anor* [1982] 1 MLJ 107). On the facts, even the principle of equitable estoppel does not apply. Both Lim and Ng failed to show evidence of some inducement or encouragement by the plaintiffs or some expectation held out by them to both Lim and Ng on the strength of which both Lim and Ng had expended money on those parts or portions of the land. On the facts, I hold that there was no landlord-tenant relationship between the parties and, consequently, the principle of equitable estoppel has no application here (*Khew Ah Bah v Hong Ah Mye* [1971] 2 MLJ 86; *Ooi Ho Cheng v Grace Joseph & Ors* [1975] 1 MLJ 168; *Lim Hock Kim v Sim Seng Quee* [1982] 2 MLJ 210 and *Ooi Ah Seng v Chan Lin Lam* [1973] 2 MLJ 20). Here, both Lim and Ng must discharge the onus that there was an equitable estoppel between both of them as against the plaintiffs and on the evidence they have failed to discharge that onus (*Tan Khien Toong & Ors v Hoong Bee & Co* [1987] I MLJ 387 (SC)).

Now, even if I were to accept that Syed Ali and regard Syed Abullah as trustees of the said estate, both of them individually or acting together cannot give legality to the agreements entered by them with Lim's father and Ng's father respectively. *Re Butlins's WT* [1976] Ch 251 lays down the principle that trustees cannot act by a majority, unless expressly authorized in the trust instrument. *Luke v South Kensington Hotel Co* (1879) 11 Ch D 121 lays down the now famous rule that a majority binds neither a dissenting minority nor the trust estate. Back home, Good J in *Foo Yin Shang & Anor v Foo Yin Fong & Ors* [1960] MLJ 63 held, inter alia, that '... it is a well settled principle that the trustees must act in unison. Therefore the first defendant should not exercise the voting rights attached to the 81,200 shares belonging to the testator's estate except in accordance with the unanimous decision of all three trustees.' His Lordship proceeded to discuss a few authorities and this was what his Lordship said:

A on the land. Lord Dunedin in *Robert Addie & Sons (Collieries) Ltd v Dumbreck* [1929] AC 358 at p 371 aptly described a trespasser as one 'who goes on the land without invitation of any sort and whose presence is either unknown to the proprietor or, if known, is practically objected to'. That would be a fitting description of the defendants.

B In another part of the same judgment, I ventured to say:

> The whole case revolves on trespass. It is a sheer waste of judicial time to proceed for trial as the whole issue can easily be resolved at this juncture. The defendants' counsel argued that the real issue could only be crystallized during the trial proper and, consequently, the application for summary judgment should be dismissed with costs. I beg to disagree. From the
> C pleadings and the affidavits filed therein, one would not only be able to see the wood from the trees but also see the moon in the darkness of the night. It would be an exercise in futility and sheer wastage of judicial time to go for trial. I have looked at the whole situation and I have asked myself time and again this vital question whether the defendants have satisfied this court that there is a fair or reasonable probability of the defendants having a real
> D or bona fide defence? (See *Banque de Paris et Des Pays-Bas (Suisse) SA v Costa de Naray* [1984] 1 Lloyd's Rep 21). Unfortunately, the answer is in the negative. I accordingly make an order that the plaintiff is entitled to summary judgment with costs.

To recapitulate, it is germane to state:

E (1) both Syed Ali and Syed Abdullah were not the registered proprietors of the land at the material time in order to vest them with the power of selling those parts or portions to Lim's father and Ng's father;

(2) if one were to construe both Syed Ali and Syed Abdullah as trustees of the said estate, they both acted without the concurrence of the co-
F trustees to sell those parts or portions to Lim's father and Ng's father. In short, they failed to act in unison;

(3) to transfer a part of the alienated land that was registered in the name of Estate and Trust Agencies (1927) Ltd was clearly against the provisions of the Land Enactment No 1. Subsequently, when the
G land became registered in the name of the plaintiffs, the mode of transferring a part of the alienated land was also against the NLC;

(4) with these legal impediments, in law, the defendants must be considered as squatters and nothing else. Payments of quit rents and other assessment rates can never give Lim and Ng titles to those parts.

H

There is, however, one last point that deserves consideration. On the question of damages, this must be read with my earlier findings that the houses that were built on those parts of the land as reflected in the photographs annexed to the affidavits were fixtures and were part of the
I land. As such those houses rightly belonged to the plaintiffs and the plaintiffs have the right to demolish those houses as they were interested in developing the land. The arguments that quit rents were paid and the Majlis Perbandaran Johor Bahru have given them postal numbers and addresses cannot in law give them (Lim and Ng) ownerships of those parts

of the land. The time has how come for the Majlis Perbandaran Johor Bahru to be more selective and cautious before proceeding to allot house numbers and addresses to illegal squatters in Johor Bahru. It must be stressed that 'squatters have no right either in law or in equity' (per Raja Azlan Shah CJ Malaya (as HRH then was) in *Sidek bin Haji Muhamad & Ors v The Government of the State of Perak & Ors* (supra)) and I venture to say that squatters will impede development and progress in the country; their very presence will stifle the image of Malaysia as a developing country. Be that as it may, both Lim & Ng are not entitled to damages and this court would make an order to that effect. However, if the plaintiffs are willing to give Lim and Ng ex gratia compensations, that would be entirely their prerogatives. For the reasons adumbrated above, with regard to Originating Summons No 24–655 of 1994, I granted prayers (a), (b) and (c) of encl 3. I too granted prayers (a), (b) and (c) of encl 4 of Originating Summons No 24–872 of 1994.

Application allowed.

Reported by Ng Kian Pin